

Decision: 2010 ME 122

Docket: Cum-10-264

Submitted

On Briefs: November 17, 2010

Decided: November 30, 2010

Panel: SAUFLEY, C.J., and ALEXANDER, SILVER, MEAD, GORMAN, and JABAR, JJ.

STATE OF MAINE

v.

DAVID VAUGHAN

PER CURIAM

[¶1] David Vaughan appeals from a judgment of conviction for operating under the influence (Class D), 29-A M.R.S. § 2411(1-A)(A) (2008)¹ entered in the Unified Criminal Docket (Cumberland County, *Warren, J.*) on his conditional guilty plea pursuant to U.C.D.R.P.-Cumberland County 11(a)(2).

[¶2] In 2007, Vaughan pleaded not guilty to operating under the influence (Class D), 29-A M.R.S. § 2411(1-A)(A), and violation of a condition of release (Class E), 15 M.R.S. § 1092(1)(A) (2009). We vacated the grant of Vaughan's subsequent motion to suppress in *State v. Vaughan (Vaughan I)*, 2009 ME 63, ¶ 14, 974 A.2d 930, 934, for reasons we need not reiterate here. On remand, with the agreement of the State and the approval of the court, Vaughan entered a

¹ Section 2411(1-A)(A) has since been amended. P.L. 2009, ch. 447, § 37 (effective Sept. 12, 2009).

conditional guilty plea for operating under the influence (Class D), 29-A M.R.S. § 2411(1-A)(A), in exchange for the State's dismissal of the violation of a condition of release charge. The court sentenced Vaughan to a \$750 fine and a ninety-day license suspension. Vaughan now appeals a second time.

[¶3] We do not address the substance of Vaughan's contentions² because his conditional plea was entered in violation of U.C.D.R.P.-Cumberland County 11(a)(2), and Vaughan's appeal is therefore not properly before us. Rule 11(a)(2), pursuant to which Vaughan purported to enter his conditional plea, expressly preserves for appellate review only a "pretrial motion and the ruling thereon." U.C.D.R.P.-Cumberland County 11(a)(2). In this appeal, however, Vaughan does not seek review of a pretrial ruling by the trial court; he is attempting to secure a second appellate review of the issues we decided in *Vaughan I*. In these circumstances, notwithstanding the agreement of the State and the approval of the court, a conditional plea was not a procedural mechanism available to Vaughan. We vacate the entry of Vaughan's conditional plea and remand the case to the trial court.

The entry is:

Judgment vacated and remanded for further proceedings consistent with this opinion.

² Vaughan seeks this appeal "in light of the decision in *Virginia v. Harris*," 668 S.E.2d 141 (Va. 2008). We note that *Harris v. Virginia*, 668 S.E.2d 141 (Va. 2008), is a Virginia Supreme Court decision, and therefore not binding, and was issued in 2008, well prior to our decision in *Vaughan I*.

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